



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-53

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DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF AMERICAN NATIONAL BANK & TRUST COMPANY DANVILLE, VIRGINIA TO PURCHASE CERTAIN OF THE ASSETS AND ASSUME ALL OF THE LIABILITIES OF THE YANCEYVILLE, NORTH CAROLINA BRANCH AND RELATED CBCT OF FIRSTSOUTH BANK, BURLINGTON, NORTH CAROLINA

September 24, 1996

B.Both Virginia and North Carolina have laws that meet the provisions of 12 U.S.C. 1831u(a)(3)(A) and 1831u(a)(4).

In this Interstate Branch Acquisition Application, Virginia is American National's home state, North Carolina is FirstSouth's home state, and North Carolina is the state in which the branch is located. Since American National is applying for an interstate branch acquisition under section 1831u(a) during the early opt-in period, the interstate branch acquisition may be approved only if each home state (Virginia and North Carolina) has the requisite law "opting-in" to interstate mergers, *i.e.*, "a law that -- (i) applies equally to all out-of-State banks; and (ii) expressly permits interstate merger transactions with all out-of-State banks." 12 U.S.C. 1831u(a)(3)(A). Additionally, the state in which the branch is located (North Carolina) must have a law which "permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank." 12 U.S.C. 1831u(a)(4)(A). **<NOTE:** Under both Virginia and North Carolina law, interstate branch acquisitions are not considered to be "interstate merger transactions." *See* VA Code 6.1-44.16; N.C. Gen. Stat. 53-224.9. However, pursuant to applicable federal law, interstate branch acquisitions are considered to be "interstate merger transactions." **>** Both Virginia and North Carolina have laws meeting the provisions of 12 U.S.C. 1831u(a)(3)(A). Additionally, North Carolina has a law meeting the provisions of 1831u(a)(4). Therefore, the interstate branch acquisition authority of section 1831u is triggered. **<NOTE:** This decision only discusses the Virginia and North Carolina laws expressly permitting interstate branch acquisitions. However, both Virginia and North Carolina have laws expressly permitting whole bank mergers with out-of-state banks. *See* Decision on the Application of NationsBank, N.A., Richmond, Virginia, and NationsBank, N.A. (Carolinas), Charlotte, NC (OCC Corporate Decision No. 95-47, September 27, 1995) (at pages 4-6) (Rieggle-Neal merger) (*OCC NationsBank Decision*). **>**

Virginia enacted legislation, effective July 1, 1995, expressly permitting branch acquisitions by out-of-state banks:

Interstate branching through the acquisition of a branch. -- An out-of-state bank that does not already maintain a branch in this Commonwealth and that meets the requirements of this article may establish and maintain a branch in this Commonwealth through the acquisition of a branch.

VA Code 6.1-44.5 (1995). **<NOTE:** In the Virginia law, the term "out-of-state bank" means a bank whose home state is other than Virginia. VA Code 6.1-44.2. Virginia has imposed a nationwide reciprocal treatment condition on branch

acquisition transactions by out-of-state banks:

Conditions for approval. -- No branch of an out-of-state bank may be established under this article unless:

1. In the case of a de novo branch,
2. In the case of a branch to be established through the acquisition of a branch, the laws of the out-of-state bank permit Virginia banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms as set forth in this article.

VA Code 6.1-44.7. In reviewing similar reciprocity conditions in state statutes with regard to the establishment of *de novo* interstate branches under 12 U.S.C. 36(g), the OCC concluded the presence of a nationwide reciprocal treatment condition did not cause the state law to fail to meet the provisions of section 36(g)(1)(A), which are substantially similar to the provisions of section 1831u(a)(3)(A). *See* Decision on the Application of Patrick Henry National Bank, Bassett, Virginia, to Establish a Branch in Eden, North Carolina (OCC Corporate Decision No. 96-04, January 19, 1996) (*OCC Patrick Henry Decision* (pages 4 and 5)). The same analysis applies here, and so the presence of a nationwide reciprocal treatment condition does not mean the Virginia law fails to trigger the early interstate branch acquisition authority of section 1831u(a)(3). *See also OCC NationsBank Decision* (at pages 5 and 6).> The Virginia code defines "acquisition of a branch" to mean "the acquisition of a branch located in a host state, without acquiring the bank of such branch." VA Code 6.1-44.2.

Similarly, North Carolina adopted legislation, effective July 1, 1995, expressly permitting branch acquisitions by out-of-state banks:

Interstate branching through the acquisition of a branch. -- An out-of-state bank that does not have a branch in North Carolina and that meets the requirements of this Article may establish and maintain a branch in this State through the acquisition of a branch.

N.C. Gen. Stat. 53-224.13. <NOTE: Similar to Virginia law, North Carolina law imposes a nationwide reciprocal treatment condition for interstate branch acquisitions prior to June 1, 1997. North Carolina law provides that:

(c) Prior to June 1, 1997, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

- (1) In the case of a de novo branch, ...; and
- (2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth.

N.C. Gen. Stat. 53-224.14 (1995).

The Riegle-Neal Act specifically permits the host state, such as North Carolina, in an interstate merger to impose a nationwide reciprocal treatment condition before June 1, 1997. *See* 12 U.S.C. 1831u(a)(3)(B)(i); *see generally OCC Patrick Henry Decision* at n. 4 (notes specific provision for nationwide reciprocal treatment in 12 U.S.C.

1831u(a)(3)(B)(i)).> The relevant North Carolina statute defines "acquisition of a branch" to mean "the acquisition of a branch located in a host state without engaging in an 'interstate merger transaction' as defined in Part 2 of this Article [Article 17B]". N.C. Gen. Stat. 53-224.9.<NOTE: The term "interstate merger transaction" is not defined in Part 2 of Article 17B (Interstate Branch Banking - Interstate de novo Branching and Acquisition of Branches). Rather, it is defined in Part 1 of Article 17B (Interstate Branch Banking - Definitions) to mean:

- a. The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
- b. The purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.

N.C. Gen. Stat. 53-224.9>

Both Virginia and North Carolina have laws that apply equally to all out-of-state banks and that expressly permit interstate branch acquisitions, with all out-of-state banks. Additionally, North Carolina has a law permitting out-of-state banks to acquire a branch of a bank in that state without acquiring the

bank. Therefore, the early interstate branch acquisition authority of sections 1831u(a)(3) and 1831u(a)(4) is triggered.

C. The proposed interstate branch acquisition meets the requirements and conditions in 12 U.S.C. 1831u(a) & 1831u(b).

An application by national banks to engage in an interstate merger transaction, including interstate branch acquisitions, under 12 U.S.C. 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, if any; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. In addition, during the early opt-in period, the application may also be subject to state-imposed conditions permitted under section 1831u(a)(3)(B), if any, that pertain to the initial merger itself (as distinct from conditions relating to the later on-going operations of the branches of the resulting out-of-state bank until May 31, 1997).

The Interstate Branch Acquisition Application satisfies all these conditions to the extent applicable. First, the proposal does not raise issues with respect to state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. 1831u(a)(5)(A). In this Interstate Branch Acquisition Application, American National is acquiring a branch of a bank in the host state of North Carolina. North Carolina does not have any minimum age requirement with respect to the acquisition of its local banks or branches of its local banks by an out-of-state bank such as American National.

Second, the proposal will meet the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. *See* 12 U.S.C. 1831u(b)(1). The North Carolina statute requires an out-of-state bank desiring to establish a branch through acquisition of a branch in North Carolina to provide written notice of the proposed transaction to the Commissioner of Banks for the State of North Carolina (Commissioner) not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to acquire the branch and to comply with the applicable requirements of the Foreign Corporations Article in North Carolina's Business Corporation Act. *See* N.C. Gen. Stat. 53-224.14(a) and .14(b). At least as implemented to date, these requirements do not appear to discriminate against out-of-state banks or to impose a filing requirement more burdensome than that imposed on nonbanking corporations. American National filed a timely notice with, and submitted a copy of its Interstate Branch Acquisition Application to, the Commissioner. Thus, it has complied with the applicable state filing requirements in accordance with the provisions of section 1831u(b)(1).

Third, the proposed interstate merger transaction is below the applicable deposit concentration limits imposed by section 1831u(b)(2) for interstate merger transactions, including interstate branch acquisitions. Since the instant interstate branch acquisition involves banks not affiliated with one another, this transaction is not exempt from the provisions of section 1831u(b)(2). *See* 12 U.S.C. 1831u(b)(2)(E)

(specifically excepts interstate merger applications involving only affiliated banks).

Section 1831u(b)(2) imposes the following nationwide and statewide deposit concentration limits:

(A) Nationwide concentration limits:

The responsible agency may not approve an application for an interstate merger transaction if the resulting bank (including all insured depository institutions which are affiliates of the resulting bank), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The responsible agency may not approve an application for an interstate merger transaction if -

(i) any bank involved in the transaction (including all insured depository institutions which are affiliates of any such bank) has a branch in any State in which any other bank involved in the transaction has a branch; and

(ii) the resulting bank (including all insured depository institutions which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

12 U.S.C. 1831u(b)(2)(A) and (b)(2)(B).

Upon consummation of this interstate branch acquisition, American National will not control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, the nationwide deposit concentration limit of section 1831u(b)(2)(A) will not be exceeded by approval of the Interstate Branch Acquisition Application. The statewide deposit concentration limits of section 1831u(b)(2)(B) do not apply to a bank's initial entry into a state. Approval of this Interstate Branch Acquisition Application will result in American National's initial entry into North Carolina. Accordingly, the statewide deposit concentration limits of section 1831u(b)(2)(B) do not apply.

Fourth, the proposed interstate branch acquisition satisfies all requirements with respect to the community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction, including an interstate branch acquisition, under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the record of compliance of any applicant bank with applicable State community reinvestment laws. *See* 12 U.S.C. 1831u(b)(3). This provision applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. 1831u(b)(3). *See also* H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

In this Interstate Branch Acquisition Application, American National (the bank submitting the application as the acquiring bank) has no branch or bank affiliate in North Carolina before the transaction, and is seeking to obtain a branch in that state. Thus, this Riegle-Neal provision is applicable to the Interstate Branch Acquisition Application. As discussed in Part II, Section F, *infra*, approval of this Interstate Branch Acquisition Application is consistent with the Community Reinvestment Act. No banks

are affiliated with American National. The state of Virginia does not have community reinvestment laws applicable to American National. <NOTE: Section 1831u(b)(3)(C) requires the OCC to, *inter alia*, "take into account the record of compliance of any applicant bank with applicable State community reinvestment laws." It appears that section 1831u(b)(3)(C) only requires the OCC to take into account American National's compliance with Virginia's community reinvestment laws. However, it is not entirely clear whether this section also requires the OCC to take into account FirstSouth's compliance with North Carolina's community reinvestment laws. North Carolina, like Virginia, has no community reinvestment laws. Accordingly, the requirements of section 1831u(b)(3)(C) are satisfied even if that section requires the OCC to consider FirstSouth's compliance with North Carolina community reinvestment laws.> Accordingly, the community reinvestment compliance provisions of section 1831u(b)(3) are satisfied.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements. The OCC may approve an application for an interstate branch acquisition under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. *See* 12 U.S.C. 1831u(b)(4). <NOTE: In an interstate branch acquisition, the branch is treated as an "insured bank" for purposes of section 1831u. *See* 12 U.S.C. 1831u(a)(4)(B). However, a branch of a bank does not have capital separate from the bank as a whole. Thus, in determining the adequacy of capital for purposes of section 1831u(b)(4) in an interstate branch acquisition, it is appropriate to determine whether the bank that owns the branch prior to the transaction (which in this case is FirstSouth) is adequately capitalized as of the date the application is filed. Of course it must also be determined that American National is adequately capitalized as of the date of the application. > As of the date the application was filed, both American National and FirstSouth satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. 1831o(b)(1)(A) and 12 C.F.R. 6.4 (as to American National) and 12 C.F.R. 325.103 (as to FirstSouth). Additionally, as to American National the capital requirements of 12 U.S.C. 51 are satisfied. The OCC has also determined that, following the interstate branch acquisition, American National will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. 1831u(b)(4) are therefore satisfied.

In addition to the five conditions discussed above, Congress permitted host states to impose conditions on a branch in the host state resulting from an interstate merger transaction, including an interstate branch acquisition, during the early opt-in period (*i.e.*, until June 1, 1997), provided the condition does not discriminate against out-of-state banks, is not preempted by federal law, and does not apply or require performance after May 31, 1997. *See* 12 U.S.C. 1831u(a)(3)(B) (quoted above at page 4). In the present Interstate Branch Acquisition Application, the host state of North Carolina has imposed a reciprocity condition on the permissibility of interstate branch acquisitions occurring prior to June 1, 1997. *See* N.C. Gen. Stat. 53-224.14(c)(2). <NOTE: North Carolina has also imposed other conditions on the permissibility of interstate branch acquisitions that apply both before and after June 1, 1997. *See* N.C. Gen. Stat. 53-224.14(a) and (b). Specifically, the North Carolina statute requires an out-of-state bank desiring to establish a branch through acquisition of a branch in North Carolina to provide written notice of the proposed transaction to the Commissioner not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to acquire the branch and to comply with the applicable requirements of the Foreign Corporations Article in North Carolina's Business Corporation Act. *See* N.C. Gen. Stat. 53-224.14(a) and .14(b). These are considered to be permissible state filing requirements under section 1831u(b), as previously discussed at page 9 herein.> As discussed in footnote 10, *supra*, this reciprocity condition is specifically permissible for pre-June 1, 1997, interstate branch acquisitions and is satisfied here.

D. Following the interstate branch acquisition, the resulting bank may retain American National's existing banking offices and may maintain and operate the branch and related CBCT in Yanceyville, North Carolina

American National has requested that upon the completion of the interstate branch acquisition it (as the

resulting bank) be permitted to retain and continue to operate its existing main office in Virginia and also to retain and continue to operate as branches (1) its own existing branches in Virginia and (2) the Yanceyville branch and related CBCT in North Carolina. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 1831u(f)(6) of this title) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B) of this section) of such bank in accordance with section 1831u of this title.

12 U.S.C. 36(d) (as added by Riegle-Neal Act 102(b)(1)(B)). Therefore, American National, the resulting bank in this interstate branch acquisition, may retain, maintain, and continue to operate each of its existing banking offices and the Yanceyville, North Carolina branch and related CBCT under 12 U.S.C. 36(d) and 1831u(d)(1). <NOTE: By its action in adding section 36(d), Congress made it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 1831u and that it operates independently of the provisions for establishment and operation of branches under 12 U.S.C. 36(c) in purchase and assumption transactions. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(c). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than section 36(c), apply to branch retention in interstate branch acquisitions under section 1831u. Thus, American National's retention of branches in this Interstate Branch Acquisition Application is authorized under sections 36(d) and 1831u(d)(1), without regard to section 36(c) and the detailed inquiry into relevant state law required thereunder. >

E. Additional reviews under the Bank Merger Act.

The Bank Merger Act, 12 U.S.C. 1828(c), requires the OCC's approval for any insured depository institution to purchase the assets of and acquire the deposit liabilities of another insured depository institution where the resulting institution will be a national bank. 12 U.S.C. 1828(c)(2)(A). Under the Bank Merger Act, the OCC generally may not approve a purchase and assumption transaction, such as an interstate branch acquisition, which would substantially lessen competition. 12 U.S.C. 1828(c)(5). In addition, the Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. 12 U.S.C. 1828(c)(5). For the reasons stated below, we find the Interstate Branch Acquisition Application may be approved under section 1828(c).

1. Competitive Analysis

The Yanceyville Branch and related CBCT are outside American National's current competitive market area. Accordingly, American National's acquisition of the Yanceyville Branch and related CBCT of FirstSouth will have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. The proposed interstate branch acquisition should place little additional burden on the resulting bank, American National. The future prospects of the resulting bank, American National, is favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. American National will continue to serve the same areas in Virginia, and it will add the Yanceyville branch and related CBCT in North Carolina. Upon completion of the transaction, customers of the Yanceyville branch will gain access to American National's broader range of products and services. No branch closings are contemplated as a result of this transaction. Accordingly, we believe the impact of the interstate branch acquisition on the convenience and needs of the communities to be served is consistent with approval of the Application.

F. Review under the Community Reinvestment Act

The Community Reinvestment Act requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications. *See* 12 U.S.C. 2903. Based on the OCC's most recent examination, American National has a satisfactory rating with respect to CRA performance.

The interstate branch acquisition is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same delineated communities as American National currently serves and as the Yanceyville branch and related CBCT of FirstSouth currently serves. American National's CRA statement will be amended to reflect the addition of the Yanceyville, North Carolina branch. American National's current CRA policies, programs, and personnel will remain as they are today. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as American National has today. The interstate branch acquisition does not alter the resulting bank's obligation to help meet the credit needs of its communities in Virginia and North Carolina. We find that approval of the proposed merger is consistent with the Community Reinvestment Act.

III. CONCLUSION AND APPROVAL

For the reasons set forth above, the interstate branch acquisition by American National is legally authorized as an interstate merger transaction under the Riegle-Neal Act, under 12 U.S.C. 1831u(a). The resulting bank is authorized to retain, maintain, and operate the offices of both banks under 12 U.S.C. 36(d) and 1831u(d)(1). The interstate branch acquisition also meets the criteria for approval under other statutory factors. Accordingly, the Interstate Branch Acquisition Application is hereby approved.

/s/

Date: 09-24-96

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